To: Committee for the Study of Electronically Delivered Products

From: The Department of Revenue

Date: April 16, 2008

Subject: **Canada's taxation and sourcing of digital products**

Legend: Red = provinces and territories that only have the federally administered GST and no provincial or territorial sales tax of any kind (like the 5 states with no sales tax)

GST = Goods and Services Tax (Federal Canadian sales tax on goods and services administered by the Canada Customs and Revenue Agency (CCRA))
HST = Harmonized Sales Tax (combined Provincial and Federal Canadian sales tax on goods and services, which is administrated by the federal CCRA)
PST = Provincial Sales Tax
RST = Retail Sales Tax (same thing as PST, but Ontario calls it RST)
QST = Quebec Sales Tax (Quebec administers the federal GST and Quebec's own provincial sales tax as one, calling it QST)

Province	Tax Types	Tax Rates	Total Tax Rate
Alberta	GST	5%	5%
British Columbia	GST & PST	5% & 7%	12%
Manitoba	GST & PST	5% & 7%	12%
New Brunswick	HST	13%	13%
Newfoundland & Labrador	HST	13%	13%
Northwest Territories	GST	5%	5%
Nova Scotia	HST	13%	13%
Nunavut	GST	5%	5%
Ontario	GST & RST	5% & 8%	13%
Prince Edward Island	GST & PST	5% & 10%	15%
Quebec	QST	12.5%	12.5%
Saskatchewan	GST & PST	5% & 5%	10%
Yukon	GST	5%	5%

Tax Treatment of Digital Products

None of the Provinces have defined digital goods as tangible personal property. Instead the supply of digital products may fall into one of three categories subject to GST: Intangible Personal Property (IPP), Service, or Telecommunications. To determine whether the supply of digital products is of IPP or Service, the Canada Customs and Revenue Agency (CCRA) looks at the agreement between the supplier and the customer to determine whether the substance of the purchase is for work (service) or property (intangible). Examples of IPP include software, music, movies, books (both downloaded and subscription based), and an ASP in which the software is only available through the entity hosting. Examples of Service include web site hosting, data warehousing, advertising, online auctions, and an ASP in which the software license is separate. Telecommunications include two broad categories: 1) service of emitting, transmitting, or receiving signals and 2) facilities available for emission, transmission, or reception. Examples of digital goods that are telecommunications include email.

Place of Supply = Sourcing
Each of the three categories have different rules for determining "place of supply," or in other words, sourcing.

Intangible Personal Property sourcing rules:

1) Sale relates to real property, tangible personal property, or services in a Province
2) "Canadian rights" = agreement states digital property can only be used in one province
3) "Place of negotiation" = digital property can be used in any province, but sale occurred in one province
4) Place of negotiation in Canada AND digital product can be used primarily in one province
5) Place of negotiation outside Canada, but digital product used in Canada and primarily in one province

Services sourcing rules:

1) All or substantially all of the Canadian element (portion of the service performed in Canada) of the service is performed in one province
2) Place of negotiation AND all or substantially all services are not performed outside that province
3) Place of negotiation in Canada AND service primarily performed in one province
4) Place of negotiation outside Canada AND service primarily performed in one province

Telecommunications sourcing rules:

Telecommunication facilities

1) All facilities in one province
2) Not all facilities in one province, but invoice sent to address in a province

Telecommunication Services

3) Services both emitted AND received in the province
4) Services emitted OR received in the province AND the billing location is in the province
5) Services emitted in province AND received outside providence AND billing location not in emitted or received providence

Provinces and the CCRA use slightly different terms and definitions, but the basic premise is that if a supplier (resident or non-resident) is located in the province or has a permanent establishment in the province, it must collect and remit the appropriate sales tax (federal and provincial when applicable). A non-resident has a permanent establishment when it has a place of business (physical space), however, the physical space could be servers located in the province that are at the disposal of the non-resident and are used for a significant and essential part of its business activity.

A non-resident supplier may still need to collect and remit sales tax in Canada even if it does not have a permanent establishment. The CCRA will consider multiple factors to determine if a non-resident supplier has a significant enough presence in Canada to be "carrying on business" in Canada and have to collect and remit sales tax. Provinces like British Columbia, Manitoba, and Saskatchewan take a hard line. Any non-resident (other than small businesses) should collect and remit the provincial sales tax. Some provinces, like Quebec, assume that non-residents will register and collect and remit sales tax on any sales to its residents, but they do not have the same statutory language the "hard line" provinces have. Prince Edward Island "encourages" non-residents to collect and remit PST, but there is no legislation requiring it.

Supplies made to non-residents (those outside the province and/or country) are generally exempt ("zero rated") from the sales tax unless the supply is in respect to activities carried on through the non-resident's permanent establishment. This allows most exports from Canada to not have to compete against suppliers outside of Canada who do not have the GST/HST. However, it should be realized that the list of zero rated goods and services is slightly different for each province.